

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK DALE FONTROY, et al., : CIVIL ACTION
Plaintiffs :
v. :
GOVERNOR MARK S. SCHWEIKER, et al., :
Defendants : NO. 02-2949

ORDER

AND NOW, this day of , 2003, it is ORDERED that
Defendants' Motion to Strike Second Amended Complaint is GRANTED. The
Second Amended Complaint, filed January 13, 2003 (Document #37), is stricken.

BY THE COURT:

THOMAS N. O'NEILL, JR., J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK DALE FONTROY, et al., : CIVIL ACTION
Plaintiffs :
v. :
GOVERNOR MARK S. SCHWEIKER, et al., :
Defendants : NO. 02-2949

DEFENDANTS' MOTION TO STRIKE SECOND AMENDED COMPLAINT

Defendants Schweiker, Beard, Vaughn, Hatcher, and Ullisny hereby move the Court pursuant to Fed.R.Civ.P. 12(f) to enter an order striking the Second Amended Complaint that plaintiffs have filed (Document #37) because the Court has already stricken the identical Amended Complaint, the claims that the Second Amended Complaint attempts to assert do not arise out of the same transaction or occurrence as the original complaint, the claims of each of the four plaintiffs do not arise out of same transaction, occurrence, or series of transactions or occurrences as each other, and the claims that duplicate the original complaint are either moot or redundant.

D. MICHAEL FISHER
ATTORNEY GENERAL

BY: s/ John O.J. Shellenberger
John O.J. Shellenberger
Chief Deputy Attorney General
Identification No. 09714

OFFICE OF ATTORNEY GENERAL
21 S. 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
Telephone: (215) 560-2940
Fax: (215) 560-1031

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK DALE FONTROY, et al., : CIVIL ACTION
Plaintiffs :
v. :
GOVERNOR MARK S. SCHWEIKER, et al., :
Defendants : NO. 02-2949

**BRIEF IN SUPPORT OF DEFENDANTS'
MOTION TO STRIKE SECOND AMENDED COMPLAINT**

The original complaint in this action was filed May 16, 2002 by four State Correctional Institution at Graterford inmates against the Governor of Pennsylvania, the Secretary of the Pennsylvania Department of Corrections, the Superintendent of Graterford, the Grievance Coordinator at Graterford, and the Graterford Mailroom Supervisor. It requested that the Court declare unconstitutional portions of a regulation and implementing policy regarding mail sent to inmates by attorneys and the courts that was scheduled to go into effect on June 24, 2002.

The defendants moved to dismiss the complaint for failure to state a current case or controversy and failure to state a cause of action. Plaintiffs filed a Motion for Leave to File Supplemental Complaint, which made allegations on behalf of three of the four plaintiffs unrelated to the original complaint. By Order entered August 14, 2002, the Court denied plaintiffs' Motion for Leave to File Supplemental Complaint.

Plaintiffs then filed an “Amended Complaint,” recorded on the docket as Document #16. This “Amended Complaint” was essentially a duplication of the “Supplemental Complaint” that plaintiffs previously sought leave to file. Defendants moved to strike the Amended Complaint, and, by order dated September 17, 2002, the Court granted the Motion.

Plaintiffs now appear to have filed a Second Amended Complaint, Document #37. However, it is an exact duplicate of the “Amended Complaint” that the Court has already stricken, except that it adds that word “Second” over the title of the document, and the dates next to the signatures have been changed to 1/8/03. The signatures themselves appear to be photocopies of the Amended Complaint. Even the “8” in the dates appear to be photocopies.

Whatever Plaintiffs are trying to do, the Court should strike this Second Amended Complaint for the same reasons that it struck the first Amended Complaint. The averments of the Second Amended Complaint do not arise out of the same transaction or occurrence as the facts alleged in the original complaint. The claims asserted by each of the individual plaintiffs do not arise out of the same transactions or occurrences as the claims made by each of the other plaintiffs, in violation of Fed.R.Civ.P. 20(a). Moreover, the Amended Complaint purports to add parties without the court approval required by Fed.R.Civ.P. 21. The case would become unwieldy and confusing if the multiple plaintiffs were permitted to pursue their multiple unrelated claims together. If they want to pursue their individual claims, they should each file separate actions.

The Second Amended Complaint, like the first Amended Complaint, does contain essentially the same allegations as the original complaint regarding the mail policy that was to go into effect in June, 2002. However, as Defendants have argued in their Motion to Dismiss for Mootness or Failure to Exhaust Administrative Remedies, claims regarding that unimplemented policy are now moot. Even if they were not moot, they would be redundant of the original complaint.

D. MICHAEL FISHER
ATTORNEY GENERAL

BY: s/ John O.J. Shellenberger
John O.J. Shellenberger
Chief Deputy Attorney General
Identification No. 09714

OFFICE OF ATTORNEY GENERAL
21 S. 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
Telephone: (215) 560-2940
Fax: (215) 560-1031

CERTIFICATE OF SERVICE

I, John O. J. Shellenberger, hereby certify that the foregoing Defendants' Motion to Strike Second Amended Complaint has been filed electronically and is available for viewing and downloading from the ECF system. I further certify that true and correct copies of the foregoing Defendants' Motion to Strike Second Amended Complaint were mailed on January 21, 2003 by first class mail, postage prepaid, to:

Derrick Dale Fontroy, AY-7513;
Theodore B. Savage, CB-2674;
Aaron Christopher Wheeler, BZ-2590
State Correctional Institution
at Graterford
P.O. Box 244
Graterford, PA 19426-0244

James S. Pavlichko, DK-0199
State Correctional Institution
at Mahanoy
301 Morea Rd.
Frackville, PA 17932

D. MICHAEL FISHER
ATTORNEY GENERAL

BY: s/ John O.J. Shellenberger
John O.J. Shellenberger
Chief Deputy Attorney General
Identification No. 09714

OFFICE OF ATTORNEY GENERAL
21 S. 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
Telephone: (215) 560-2940
Fax: (215) 560-1031